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David E. Evans Direct: 804.775.4317 2回 111 -6 林 9:23

CAVAR. APPEALS BOARD

deevans@mcguirewoods.com Direct Fax: 804.698.2049

November 5, 2007

BY FEDERAL EXPRESS Ms. Eurika Durr Clerk of the Board Environmental Appeals Board (MC 1103B) U.S. Environmental Protection Agency 1341 G Street, NW Sixth Floor Washington, DC 20005

Re: In re Government of the District of Columbia Municipal Separate Strom Sewer System, NPDES Appeal Nos. 06-07 and 06-08

Dear Ms. Durr:

Please find enclosed for filing the original and five copies of the Response of Petitioner Government of the District of Columbia to EPA Region III's Notice of Withdrawal of Permit Amendment and Motion for Dismissal with Prejudice.

Thank you for your assistance.

David E. Evans

Enclosures

cc: Caroline Burnett, Esquire Lori G. Kier, Esquire David S. Baron, Esquire Jennifer Chavez, Esquire

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ENVIRONMENTAL APPEALS BOARD UNITED STATES ENVIRONMENTAL PROTECTION AGENCY -6 M 9:23

ENVIR. APPEALS BOARD

In re:)
)
Government of the District of Columbia,)
Municipal Separate Storm Sewer System)
NPDES Permit No. DC 0000221,))
Government of the District of Columbia	 NPDES Appeal Nos. 06-07 and 06-08
Friends of the Earth and Defenders of Wildlife)
Petitioners,	ý
U.S. Environmental Protection Agency,)
Region III)
Respondent.	ý)

RESPONSE OF PETITIONER GOVERNMENT OF THE DISTRICT OF COLUMBIA TO EPA REGION III'S NOTICE OF WITHDRAWAL OF PERMIT AMENDMENT AND MOTION FOR DISMISSAL WITH PREJUDICE

Petitioner Government of the District of Columbia (District) responds as follows to EPA Region III's October 29, 2007 Notice of Withdrawal of Permit Amendment and Motion for Dismissal with Prejudice:

The District has no objection to EPA Region III's Notice of Withdrawal of Permit Amendment. The District also has no objection to EPA Region III's Motion for Dismissal with Prejudice based upon the District's understanding that the Board's general practice is to dismiss with prejudice those permit appeals that are withdrawn, settled, or otherwise resolved in some fashion prior to the Board's adjudication of the cases on the merits and that such dismissals do not prejudice in any way the rights of the parties to contest future permits or permit amendments. However, to avoid any potential misunderstanding regarding the effect of the dismissal with prejudice, the District requests that the Board's dismissal order include explicit language explaining that the parties' rights to further appeals of revised and re-proposed permits and permit amendments are preserved in all relevant respects.

Respectfully submitted this 5th day of November, 2007.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

David E. Évans McGuireWoods LLP One James Center Richmond, VA 23219 (804) 775-4317 devans@mcguirewoods.com

Caroline Burnett Assistant Attorney General District of Columbia Department of the Environment 51 N Street, N.E., Room 6004 Washington, D.C. 20002-3323 (202) 535-2609 caroline.burnett@dc.gov

CERTIFICATE OF SERVICE

I hereby certify that I have sent the original and five copies of the foregoing Response of Petitioner Government of the District of Columbia to EPA Region III's Notice of Withdrawal of Permit Amendment and Motion for Dismissal with Prejudice to the Clerk of the Environmental Appeals Board by Federal Express Priority Overnight at the following address:

> Ms. Eurika Durr Clerk of the Board Environmental Appeals Board (MC 1103B) U.S. Environmental Protection Agency 1341 G Street, NW Sixth Floor Washington, DC 20005

I also certify that I have mailed a copy of each of the address below:

Lori G. Kier Senior Assistant Regional Counsel United States Environmental Protection Agency Region III 1650 Arch Street Philadelphia, PA 19103-2029

David S. Baron, Esquire Jennifer Chavez, Esquire Earthjustice Legal Defense Fund 1625 Massachusetts Avenue, NW #702

Washington, DC 20036

Date: NW. 5, 2007

David E. Evans

#4858150